is an expression of a contrary intent, it would seem that there could be no presumption in reason and fairness except that the parties intended their agreement to be governed by the law of the corporate domicil.[12]

RIGHT OF PARTY TO IMPEACH WITNESS CALLED BY HIMSELF.—The rule that one cannot impeach his own witness undoubtedly originated in the duties of the early Anglo-Saxon compurgators who were chosen by each litigant to vouch for his cause.[1] The success of his case thus depended upon their credibility and their impeachment would have meant his defeat. But under the modern theory of evidence as a method of bringing facts to the knowledge of the court or jury, the idea that a party guarantees the trustworthiness of his witnesses, though often advanced even now as a reason for the continuance of the rule,[2] is contrary to the fact. A litigant nowadays has no unlimited choice of witnesses. On the contrary, he must take those who know the facts upon which he intends to rely, whatever their character, and the summoning of persons known to be unreliable, or who are likely to give testimony to some extent adverse, may therefore often be necessary and entirely consistent with good faith.[3] It is widely established, indeed, that in cases where a party is under a legal duty to summon certain witnesses, he may impeach them, since he had no choice;[4] but, as just suggested, necessity may equally restrict his choice and should lead to the same result.

This historical reason having thus long since lost its force, it remains to inquire if the rule can find support to-day. It is clear, at least, that its abrogation could afford no greater opportunities for collusion than now exist,[5] but it has been urged that if an attack upon one's own witnesses were allowed, they might be coerced into giving any testimony desired.[6] It would seem, however, that to give to one party an unlimited right of impeachment while denying it to the other, as in the recent New York case of *Power* v. *Brooklyn Heights Ry.* (1912) 40 N. Y. L. J. No. 126,[7] might well induce a witness to favor the

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[12]Risdon Iron Works *v.* Furness L. R. [1905] 1 K. B. 304, aff'd L. R. [1906] 1 K. B. 49.

[1]Wigmore, Evidence, § 896; 1 Pollock & Maitland, Hist. of English Law, 139, 140.

[2]Pollock *v.* Pollock (1877) 71 N. Y. 137; Comw. *v.* Hudson (Mass. 1858) 11 Gray 64.

[3]Brooks *v.* Weeks (1877) 121 Mass. 433.

[4]Denneth *v.* Dow (1840) 17 Me. 19; Wigmore, Evidence, § 917; Greenleaf, Evidence, (16th ed.) § 443. At one time a party was not allowed to introduce evidence even on a material point for the purpose of contradicting other evidence given by one of his witnesses, but this is universally allowed now even though the effect is to impeach his own witness. Wigmore, Evidence, § 897; Bradley *v.* Ricardo (1831) 8 Bing. 57; Starkie, Evidence, (10th Am. ed.) *244.

[5]Wright *v.* Beckett (1838) 1 M. & Rob. 414.

[6]Wigmore, Evidence, § 899.

[7]The rule that in case of surprise a party may cross-examine his own witness as to prior contradictory statements, but may not prove them by other evidence, obtains in some jurisdictions, while other jurisdictions allow such statements to be proved by extrinsic testimony. Chase's Stephen's Digest, 330, 2nd footnote.

former, from whom alone he had anything to fear. Such inequity would then actually open the way to coercion by an adversary, whereas if both sides might impeach, neither would be at a disadvantage in this regard. Accordingly, there seems to be little danger of coercion unless a litigant be at liberty to blacken the character of his witnesses whenever they fail to satisfy his wishes.

But a consideration of the true aim of our modern trial by jury will lead, it is submitted, to the formulation of a rule which escapes this difficulty. Formalism is no longer an object in itself, but the purpose of evidence is to discover the truth and merits of the case; and everything should therefore be submitted to the jury which will aid them in determining the actual facts.[8] Evidently an indiscriminate vilification of the general character of a witness could only confuse the jury in weighing his testimony, and accordingly impeachment of this broad type, which apparently presents the only possible opportunity for coercion, should be forbidden.[9]

But it is of the greatest importance that a jury should measure as accurately as possible the credibility of the witness; and it is hardly consistent with the search for the merits of cases that the truth should be welcomed if brought to light by one side of a controversy, but forbidden if sought to be shown by the other.[10] Indeed, the unduly damaging force of adverse testimony given by one's own witness would constitute an additional penalty in such a case. Only some grave offence, it would seem, could justify this discrimination, but the party calling a witness, as pointed out above, can be guilty of nothing reprehensible in so doing. It follows, then, that it should be open to both parties alike, as it now admittedly is to an adversary,[11] to show lack of veracity in the witness. There could be but little cause for fear to an honest witness in such a rule, and surely justice requires that any deception on the stand should be exposed. Similarly any facts tending to disprove or weaken particular testimony, such as prior contradictory statements,[12] or interest and bias,[13] or fraud or subornation,[14] should be brought to the attention of the jury. It must be borne in mind, however, that this evidence should be admissible only to counteract adverse testimony actually given, and for the sake of impeachment alone. To permit such facts to be shown where a witness simply failed to testify as expected, would be indirectly to bring in, because of its inherent force, evidence not properly admissible as such.[15]

The view that the rule forbidding impeachment of one's own wit-

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[8]Bradley *v.* Ricardo *supra.*

[9]U. S. *v.* Vansickle (1840) 2 McL. C. C. 219; Atwood *v.* Impson (1869) 20 N. J. Eq. 150; Wigmore, Evidence, §§ 922, 923; *contra,* Bakeman *v.* Rose (N. Y. 1837) 18 Wend. 146.

[10]If both parties had to use an unscrupulous witness, both would be at his absolute mercy under the rule as applied. Coulter *v.* Am. Merchant's Express Co. (1874) 56 N. Y. 585; and see Comw. *v.* Hudson *supra;* Story *v.* Saunders (Tenn. 1848) 8 Humph. 663.

[11]Starkie, Evidence, (10th Am. ed.) *246.

[12]Wright *v.* Beckett *supra;* Selover *v.* Bryant (1893) 54 Minn. 434; Hulburt *v.* Bellows (1870) 50 N. H. 105, argument for plaintiff.

[13]Dunn *v.* Aslett (1838) 2 M. & Rob. 122.

[14]See Wigmore, Evidence, § 901; Wright *v.* Beckett *supra.*

[15]People *v.* Mitchell (1892) 94 Cal. 550.

ness is an arbitrary and needless obstruction of justice is borne out by the marked tendency to modify it either by decision[16] or by legislation.[17] The Massachusetts statute, which permits such impeachment either by cross-examination or by extrinsic testimony, irrespective of surprise, but forbids general attacks upon character, is typical of the better view.

RELATION OF PRINCIPAL AND THIRD PARTY ON RATIFICATION OF UNAUTHORIZED CONTRACTS.—Authorities are united on the proposition that the ratification of a contract made by an unauthorized agent binds the principal by relation from the time of the original transaction.[1] This unanimity disappears, however, when the principal upon ratification invokes this doctrine to bind the third party from that time.[2] The English courts have always adhered strictly to the maxim that ratification is equivalent to prior authority, and hold the third party[3] even though he withdrew his assent and notified the assumed principal prior to ratification.[4] They deem him free from the obligation only when he and the unauthorized agent mutually agree to rescind.[5]

The decisions of American courts upon this question are openly at variance.[6] In several jurisdictions, for instance, ratification will not bind the third party unless he again assents to the contract,[7] and it must be admitted that this result follows naturally from orthodox principles of contract, which require mutuality of obligation before either party is bound. These courts, however, are unwilling to carry the doctrine to its logical conclusion, for although they hold the original contract a nullity, they nevertheless refuse to regard the subsequent ratification and assent as the creation of a new contract, but deem the agreement to relate to the time of the original transaction. The foregoing view is often sought to be supported by a considerable number of decisions in other jurisdictions which may, however, be distinguished,

[16]Hurlburt *v.* Bellows *supra;* Selover *v.* Bryant *supra.*

[17](Mass.) Rev. Laws cl. 175, § 24; (Eng.) 17 & 18 Vict. cl. 125, § 22; (Vt.) (1886) Pub. Stat. 1906, § 1597; (Ind.) Burns Anno. Stat. § 531; (Cal.) Code Civ. Pro., §§ 2049, 2052; (Ore.) Lord's Ore. Laws, § 861.

[1]Mechem, Agency, § 167; Story, Agency, (8th ed.) § 239.

[2]Mechem, Agency, § 179; Story, Agency, (8th ed.) §§ 245-248; Atlee *v.* Bartholomew (1887) 5 Am. St. Rep. 103, 109; 5 Law Quar. Rev. 440; 9 Harv. L. Rev. 60.

[3]Routh *v.* Thompson (1811) 13 East 274; Hagedorn *v.* Oliverson (1814) 2 M. & Selw. 485.

[4]Bolton Partners *v.* Lambert (1889) L. R. 41 Ch. D. 295; *In re* Copper Mines (1890) L. R. 45 Ch. D. 16; *In re* Tiedemann and Lederman *Frères* (1899) 2 Q. B. 66.

[5]Walter *v.* James (1871) L. R. 6. Exch. 124.

[6]Some commentators assume that they unanimously negative the conclusions reached in England. See the controversy indicated by 5 Am. St. Rep. 109 and 24 Am. L. Rev. 580.

[7]Dodge *v.* Hopkins (1861) 14 Wis. 686; Atlee *v.* Bartholomew (1887) 69 Wis. 43; Clews *v.* Jamieson (1898) 89 Fed. 63. These cases are admittedly based on the decision in Townsend *v.* Corning (N. Y. 1840) 23 Wend. 435, which is cited as standing for this doctrine. This case, however, decides only that where an agent fails to execute a sealed instrument in his principal's name, the principal cannot ratify the act so as to bind the third party, a proposition which has been established since the anonymous cases (1405) Y. B. 7 H. IV. 34 pl. 1 and (1586) Gobolt, 109, pl. 129.